

**From:** "Janet Way" <tworthington@earthlink.net>  
**To:** <miles.mayhew@seattle.gov>  
**Date:** 3/17/2005 12:31:02 PM  
**Subject:** CAO Update Comments from TCLDF

Miles,  
Please include my comments in the record today!

Janet

March 14, 2005

Ms. Diane Sugimura  
Director  
Seattle Department of Planning and Development  
P.O. Box 34019  
Seattle, WA 98124-4019

Dear Ms. Sugimura:

This letter provides the comments of Thornton Creek Legal Defense Fund on the Seattle DPD's proposed Critical Areas Ordinance Amendments. Please make my group a party of record and keep us informed of all notices, meetings and hearings on this matter.

As you know, TCLDF was the proponent of Daylighting Thornton Creek at Northgate, which as you know is a project which now enjoys widespread support in the community and within all levels of government and many in the development community. I serve as our representative on the Northgate Stakeholders Committee. It is indeed a joy to see this project come to fruition, largely because of the design endorsed and now being finetuned by Seattle Public Utility. It has even been said by members of the SPU staff that the Thornton Creek Channel at Northgate Project represents simply the greatest and highest value opportunity for the Utility to provide a water quality and infiltration project in the entire city.

Therefore we find it shocking that the newest version of the CAO Draft has removed language that strongly discourages building over piped creeks, and it is proposing that incentives for daylighting apply only to larger creeks. We must NOT remove these options for daylighting piped water courses for developers in historic stream corridors, and must protect those piped watercourses within the pipes and their buffers and acknowledge the potential they can provide for salmonid habitat. It would be a tragic misstep for the City of Seattle which will in effect lose options for restoration of its historic resources and for citizens in its neighborhoods who wish to participate in such projects. The policy would also be at odds with the city's own existing policies to restore watershed functions, by repairing damaged stream corridors, preventing flooding, and removing barriers to fish migration. This policy disregards opportunities which may be presented to improve habitat corridors recommended in the ESA, and to remove illegal barriers to fish migration recommended by the

Washington Department of Fish and Wildlife.

TCLDF was also a major supporter of Initiative 80 (Save Seattles Creeks), and after collecting well over the required amount of signatures, the Creeks Initiative was removed from the ballot, the city attorney and the courts told us that the Critical Areas Ordinance was the place to address such issues as 'daylighting'<sup>2</sup>, not in a citizens initiative. So we worked with the council and staff on legislation to provide the option of daylighting and protect the piped watercourses. But now, your office and the City Attorney has removed those provisions. This is clearly not a fair way to deal with citizens concerns or a fair way to make policies for the City on such important issues relating to SEPA, GMA, ESA, Clean Water Act and Shoreline protections. The City of Seattle cannot deny it's duty to protect habitat for salmonid fish and/or it's responsibility to provide water quality, and functions and values of streams. It also cannot deny the presence of threatened species within its boundaries.

During the recent I-80 lawsuit, the Law Department on behalf of the City took the position that the only way to adopt protection of creeks in pipes was through the CAO update. Now the same department is denying citizens AND developers this option of amending the CAO to protect creeks through this legislative process. We believe that this is clearly unreasonable and confusing.

Under the existing CAO, every effort must be made to avoid developing over a creek that is currently contained in a creek or culvert. By discouraging such development, this policy preserves the ability to restore these creeks in the future. At the same time, the CAO allows the Director to provide incentives for daylighting projects, including the ability to relocate the creek on the property or to reduce the size of buffers. Under the existing policy the Director may permit a daylighting project and encourage it with incentives. This is a much more logical policy than the one proposed in the CAO updates. For instance, at Northgate, incentives are now being considered to reduce some of the parking requirements in order to provide flexibility for the developer to design the project around the proposed creek channel project. We suggest that regulatory incentives are a crucial part of the tools which should be available to DPD to encourage good stewardship and restoration through 'retrofitting'<sup>2</sup>. These options would be lost with the repeal of the current policy.

We object to the proposed policy to remove protections for piped watercourses and encourage daylighting.

Along the same lines, we wish to point out a recent Court of Appeals ruling in a case revolving around a piped watercourse on Thornton Creek. In Shoreline, in the 'Gaston case'<sup>2</sup>, (Timothy Crawford & Patricia Crawford, Respondents v City of Shoreline; and Gaston Enterp. Appellants) Tim and Patty Crawford have fought to protect the integrity of a section of the creek just upstream from their property. The recent ruling stated

<sup>3</sup>It is undisputed that Thornton Creek enters the Gaston property in the underground culvert and exits (in) the culvert on the Crawfords' property. It is also undisputed that Thornton Creek is classified as a Class Two stream before it enters and after it exits the

culvert. We agree with the trial court and conclude that the water does not cease being part of Thornton Creek while passing through the culvert. As part of Thornton Creek, the culverted section under Gaston's property was and remained part of a Class Two stream.<sup>2</sup>

This ruling establishes the value of a piped watercourse as to the integrity of a stream. We believe it shows the need to protect the watercourses and their buffers and never to permit building over them.

We also object to the exclusion of small streams which maybe unknown or have fewer advocates in their neighborhoods. These streams may provide fish habitat or habitat for other species and certainly contribute sources of water quality to larger bodies of water.

In addition, we have concerns about the size of proposed buffers and the claim that these recommendations are supported by Best Available Science. BAS clearly recommends that adequate buffers for class II streams should be at least 100ft. In our urban areas, we now have pre-existing situations of much smaller buffers from the older built environment. This reality is not explained away by <sup>3</sup>science<sup>2</sup> but must simply be acknowledged as the existing situation. With incentives and other encouragements, better buffers can be achieved when retrofitting occurs through new development. Also, sometimes the City can acquire properties in riparian corridors to remove older housing of buildings from the buffer areas. This has already occurred, for instance along Thornton Creek at NE 105th near the new site for the Public Library where a home was built in the flood plain long ago and now is adjacent to a public park. These opportunities can become available and improvements achieved, if larger buffers are a goal in the policy.

Minimums of 50<sup>1</sup> on Class II streams and 35<sup>1</sup> on Class III streams should be the rule with larger buffers as the goals to be encouraged.

We also have concerns about the neglecting of protections against pesticides and toxic raised by Initiative 80 and added to the CAO updates to address them. We believe DPD should adopt the proposed policies to provide protections for water resources and therefore for human health against the dangers from toxics.

In addition we share concerns about the lack of any buffers proposed for the City's shorelines along Puget Sound or Lake Washington (and the related deletion of the lakes and Elliott Bay from the definition of <sup>3</sup>Fish and Wildlife Habitat Conservation Areas<sup>2</sup>). It is not adequate to say that these issues will be settle by the Shorelines Master Program, since that will not be addressed until 2009. Four years is obviously too long to wait. The salmon cannot wait, as they are in decline and in threatened status.

We also share the concerns about creeks, wetlands, shorelines, steep slopes Fish and Wildlife Habitat Conservation Areas and adopt the arguments made by Thornton Creek Alliance, Yes for Seattle, People for Puget Sound and Livable Communities Coalition by reference, about those issues.

Please accept these comments and keep us apprised of all notices and hearings.

Respectfully Submitted,

Janet Way

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